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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,810	11/23/2001	David Harris	Brookstone 01.01	5577

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Attention Norman P. Soloway
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EXAMINER	
SAADAT, CAMERON	
ART UNIT	**PAPER NUMBER**
3713	10

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/991,810	Applicant(s) HARRIS ET AL.
	Examiner Cameron Saadat	Art Unit 3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *40* is/are allowed.

6)☒ Claim(s) *1-8, 10-39* is/are rejected.

7)☒ Claim(s) *9* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11/23/01* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

In response to Amendment filed 12/29/2003, claims 1-39 and newly added claim 40 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4-8, 10-20, 23-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ancona et al. (US Patent Application Publication 2002/0009016 A1; hereinafter Ancona) in view of Barker (USPN Des. 386,941)

Regarding claims 1, 15, 20, and 34, Ancona discloses a bar tool, comprising: a handle 76 (see Fig. 4a); an electronic display 92 for displaying drink a drink recipe coupled to handle 76; and a container 84 extending from the handle for mixing ingredients; and (as per claims 15 and 34) memory 52 disposed in the handle for storing drink titles and drink recipes. It is not explicitly disclosed that container 84 is a measuring device. However, Barker illustrates a handle with a mixing container extending from the handle, wherein the container provides measurement markings. Hence, it would have been obvious to a

person of ordinary skill in the art to modify the container described in Ancona, by providing measurement markings, in light of the teachings of Barker, in order to measure ingredients.

Regarding claims 4 and 23 Ancona discloses a bar tool, further comprising a memory 52 for storing a plurality of drink titles/recipes.

Regarding claims 5, 16, 24, and 35, Ancona discloses a bar tool, further comprising an actuator 58b for scrolling through the plurality of drink titles stored in the memory (see Fig. 4b).

Regarding claims 6 and 25, Ancona discloses a bar tool, wherein each drink title has an associated list of ingredients stored in memory (see Fig. 4b, ref. 92).

Regarding claims 7 and 26, Ancona discloses a bar tool, further comprising an actuator 58b for scrolling through the list of ingredients stored in memory.

Regarding claims 8 and 27, Ancona discloses a bar tool, further comprising a controller 28 for determining text to be displayed on the display.

Regarding claims 10 and 28 Ancona discloses a bar tool, wherein the display displays text (see Fig. 4b, ref. 92).

Regarding claims 11 and 29, Ancona discloses a bar tool, wherein the display displays icons (see Fig. 4b, ref. 92).

Regarding claims 13, 18, 31, and 37, Ancona discloses a bar tool wherein the container device 84 is removable from the handle 76 (See Fig. 4c).

Regarding claims 12, 17, 30, and 36, Ancona discloses a bar tool comprising a communications port for changing the memory (page 1, col. 2, paragraph 0015).

Regarding claims 33 and 39, Ancona discloses a tool wherein the recipe is selected from a group consisting of cooking (see Fig. 6).

Regarding claims 14, 19, 32, and 38, the combination of Ancona and Barker discloses all of the claimed subject matter, but does not explicitly disclose that the measuring device 84 is rotatable in the

handle 76. However, it is implicit that measuring device 84 is rotatable in the handle 76 for removal and cleaning.

Claims 2-3 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ancona et al. (US Patent Application Publication 2002/0009016 A1; hereinafter Ancona) in view of Barker (USPN Des. 386,941), further in view of Herbert (USPN 4,588,004).

The combination of Ancona and Barker discloses a handle 76; an electronic display 92 for displaying drink a drink recipe coupled to handle 76; and a measuring device 84 extending from the handle for mixing ingredients. It is not explicitly stated that the measuring device comprises a first and second measuring container (as per claims 2 and 21) and wherein the first measuring container has a volume capacity larger than the second container (as per claims 3 and 22). However, Herbert discloses a bar tool for measuring drink ingredients comprising a first measuring device 20 having a larger volume capacity of its second measuring device 42. In view of Herbert, it would have been obvious to a person of ordinary skill in the art to modify the measuring device described in the combination of Ancona and Barker, by providing a measuring device having a first and second measuring device, in order to provide a device wherein individual ingredients may be measured with one measuring device and emptied into the larger measuring device for mixing.

Response to Arguments

Applicant's arguments filed 12/29/03 have been fully considered but they are not persuasive.

It is asserted by the applicant that Ancona does not disclose, teach or suggest a *handle* and does not disclose displaying an *icon*.

Applicant is reminded that claims are given their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d

319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

The examiner notes that Merriam-Webster's Dictionary provides the following definitions:

handle - a part that is designed especially to be grasped by the hand

icon - a sign (as a word or graphic symbol) whose form suggests its meaning; a graphic symbol on a computer display screen that suggests the purpose of an available function. Thus, Ancona clearly discloses a handle 76 and displaying icons (see Fig. 4b, ref. 92).

Applicant further emphasizes that the combination of Ancona, Barker, and Herbert does not disclose, teach, or suggest *a first and second measuring container extending from the handle* as described in claim 2. However, The standard of patentability is what the prior art, taken as a whole, suggests to an artisan at the time of the invention. *In re Merck & Co., Inc., 800 F.2d 1091,1097, 231 USPQ 375, 379 (Fed. Cir. 1986).* The question is not only what the references expressly teach, but what they would collectively suggest to one of ordinary skill in the art. *In re Simon, 461 F.2d 1387, 1390, 174 USPQ 114, 116 (CCPA 1972).* In this case Ancona discloses a bar tool, comprising: a handle 76 (see Fig. 4a); an electronic display 92 for displaying drink a drink recipe coupled to handle 76; and a container 84 extending from the handle for mixing ingredients. It is not explicitly disclosed that container 84 is a measuring device. However, Barker illustrates a handle with a mixing container extending from the handle, wherein the container provides measurement markings. Hence, it would have been obvious to an artisan to modify the container described in Ancona, by providing measurement markings, in light of the teachings of Barker, in order to measure ingredients. The combination of Ancona and Barker discloses all

of the claimed subject matter of claim 2 with the exception of explicitly disclosing that the measuring device comprises a first and second measuring container. However, Herbert discloses a bar tool for measuring drink ingredients comprising a measuring device that comprises a first measuring container 20 and second measuring container 42. In view of Herbert, it would have been obvious to a person of ordinary skill in the art to modify the measuring device described in the combination of Ancona and Barker, by providing a *measuring device having a first and second measuring device*, in order to provide a device wherein individual ingredients may be measured with one measuring device and emptied into the larger measuring device for mixing.

It is further asserted by the applicant that neither Ancona nor Barker disclose, teach, or suggest scrolling through the plurality of drink titles. However, Ancona clearly discloses that, "actuator 58b may be used to navigate or *scroll* through the menu of choices displayed on the LCD 92." (See ¶ 40); "in step 112, the user may user the up and down navigational key 58b to chose a particular recipe from the list..." (See ¶ 42). It is further clearly disclosed that the recipe may be a drink title (see Fig. 3, ref. 64).

Allowable Subject Matter

Claim 40 is allowed and claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Patentability is seen in, although not limited to:

Independent claim 40 and dependent claim 9, the combination of elements specifically claimed, including a tool comprising an electronic display coupled to the handle for displaying a drink recipe; and a measuring device extending from the handle for measuring ingredients; and *a controller for determining the text to be displayed on the display wherein the controller displays a next ingredient in the recipe when a sensor senses rotation of the handle*.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

CS

T. Walberg

Teresa Walberg
Supervisory Patent Examiner
Group 3700